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81

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/984,459	12/03/97	CHEN	J 31

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HM12/0715

EXAMINER	
LILLING, H	ART UNIT PAPER NUMBER

1651 2  
DATE MAILED: 07/15/99

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

- Responsive to communication(s) filed on \_\_\_\_\_  
 This action is FINAL.  
 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire ONE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- Claim(s) 1-10 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 Claim(s) \_\_\_\_\_ is/are allowed.  
 Claim(s) \_\_\_\_\_ is/are rejected.  
 Claim(s) \_\_\_\_\_ is/are objected to.  
 Claims 1-10 are subject to restriction or election requirement.

#### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. 3-25-98  
 The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
 The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.  
 The specification is objected to by the Examiner.  
 The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
 All  Some\*  None of the CERTIFIED copies of the priority documents have been received.  
 received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of Reference Cited, PTO-892  
 Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  
 Interview Summary, PTO-413  
 Notice of Draftsperson's Patent Drawing Review, PTO-948 3-25-98  
 Notice of Informal Patent Application, PTO-152

Ser No 08/984459

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

Art Unit: 1651

1. Claims 1-10 are present in the instant application.
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-7, drawn to gel composites, classified in class 428, subclass one plus.
  - II. Claims 8-10, drawn to articles of clothing, classified in class 442, subclass 59.
3. The inventions are distinct, each from the other because:

Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful for a number of products per se and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. If Applicant elects Invention I, Applicant is requested to clearly delineate the claimed patentable differences between the instant claims and a number of other Applicant's own copending or patented claimed gel composites.

6. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification. There are holes at the top of the pages 2, 4, 5, 6, 7, 8, 9, 10, 12-9, 21-33, 36-38 which holes have punched out part of the first line of the above pages. Applicant is required to submit legible copies.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lilling whose telephone number is (703) 308-2034 and fax number (Art Unit 1651) is (703) 305-7939 or SPE Michael Wityshyn whose telephone number is (703) 308-4743. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

H.J.Lilling: HJL  
(703) 308-2034  
Art Unit 1651  
July 12, 1999

*Herbert J. Lilling*  
HERBERT J. LILLING  
PATENT EXAMINER  
GROUP 150 ART UNIT 1651